Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 263 of 2002 (M/S)

Ibrahim Ali
Murtja
Idrish
All S/o Late Mr. Mohammad Umar Kadir Basksh
All R/o Village Nagla Kubra, Pargana Bhagwanpur,
Tehsil Roorkee District Haridwar …….Petitioners

Versus

1. Deputy Director Consolidation
   District Haridwar

2. Settlement Officer Consolidation
   Tehsil Roorkee
   District Haridwar.

3. Consolidation Officer
   Tehsil Roorkee
   District Haridwar.

4. Consolidation Committee
   through President Consolidation
   Committee, Nagala Kurba
   Pargana Bhagwanpur
   Tehsil Roorkee District Haridwar.

5. Zameel Ahmad
   S/o Mustaq & others ……. Respondents

Mr. Sharad Sharma, learned counsel for the petitioners.
Mr. K.S. Verma, learned counsel for the respondents no. 4.

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under Article 227 of the Constitution of India, the petitioners have challenged orders dated 11.01.2002, 04.02.2001, 02.02.2000 and

02.09.1999 passed by respondent no. 1,2,3 and 4 (the consolidation authorities).

2) Brief facts of the case, as narrated in the petition, are that the petitioners are holders of chak no. 127, which they inherited from their late father Mohammad Umar Kadir Baksh, in respct of the original holding comprising of khasra no. 17. The petitioners filed their objections dated 30.06.1996 with the allegations that plots allotted in favour of respondent no. 5 to 8 and 16, have rendered the original holding of petitioners khasra no. 17 deshaped from its rectangular shape which had source of irrigation and valuable trees standing therein. It was also pleaded in the objection raised by the petitioners that land pertaining to Khasra nos. 14, 18 and 21 allotted to the petitioners are against the spirit of section 19 of U.P. Consolidation of Holdings Act, 1953, as the plots no. 18 and 21 has been shown of the higher valuation at 50 P while it should have been valued at 20P. Not only this, it is alleged that the land of Khasra no. 14 now allotted to the petitioners, is a low lying land and was wrongly valued at 30 P which is not more than 10 P. The petitioners demanded that their chak should be carved out from their original holding of Khasra no. 17. The petitioners objection was registered as case no. 222 and were rejected. Consequently, due to the chak allotted to others by the respondent no. 3, the original holding of Khasra no. 17 was reduced and it did not remain rectangular. Petitioners appear to have filed appeal under section 21 (2) of the Act, against order of the respondent no. 3 which was registered as appeal no. 666 and the same was also disposed of vide order dated 02.02.2000, whereby

it was held that no change is required. Meanwhile, respondent no. 11 and 12 filed two separate appeals against the order of the Consolidation Officer which were registered as appeal no. 663 and appeal no. 724 against father of the petitioners who had died and both the appeals were allowed vide order dated 04.02.2000 by Settlement Officer Consolidation. The petitioners have challenged the orders as said orders were passed against the dead person without impleading the petitioners. The petitioners on this, moved a restoration application but the same was rejected in respect of the order dated 02.02.2000 but allowed as against the order dated 04.02.2000. However, no heed was paid to the grievance of the petitioners for allotting one compact chak in the petitioners original holding in Khasra no. 17. As such two revisions were filed by the petitioners along with application under section 5 of the Limitation Act, 1963, before the Director of Consolidation. Both the revisions were consolidated and disposed of by the respondent no. 2 but the petitioners grievance remained unredressed. Hence, this petition is filed.

3. Respondent no. 6,7,8,9,10,15 and 17 contested the petition and a counter affidavit was filed on their behalf by respondent no. 8. The allegations contained in the writ petition were denied in the counter affidavit except those relating to record and matters of legal arguments.

4. I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

5. The first submission made on behalf of learned counsel for the petitioners is that his area has been reduced by more than 25 percent and as such the learned consolidation authorities have not followed the provisions of Section 19 of U.P. Consolidation of Holdings Act, 1953 (herein after brevity-the Act). In this regard my attention was drawn by the learned counsel to the annexures annexed with the order dated 04.02.2000 (copy Annexure-5 to the writ petition). Perusal of the annexures, showing amendments made by Settlement Officer of Consolidation, shows that the area of the petitioners have been reduced from 0.2749 to 0.1397. However, the error appears to have been rectified vide order dated 11.01.2002, passed by Dy. Director of Consolidation, whereby the revision filed by the petitioners have been allowed. The copy of the judgment of the Dy. Director Consolidation, is Annexure –10 to the writ petition and an Annexure to said order dated 11.01.2002, incorporating the modification, shows that now area provided to the petitioners is 0.4867, against the original area, 0.4771 held by them. As such, I see no force in the contention made on behalf of the petitioners.

6. The next submission made by learned counsel for the petitioners, is that the Consolidation Officer and Settlement Officer for Consolidation were required to made spot inspection under section 21 (3) of the Act. Assuming for a moment that the inspection was not made by said authorities, but after the revision of the petitioners is allowed by the Dy. Director of Consolidation, it cannot be said if the petitioners still suffer due to the non inspection of the plots.

7. Thirdly, Shri Sharad Sharma, Learned counsel for the petitioners, contended that in the revision, objections of Shukat Ali have been wrongly heard and allowed by the Dy. Director of Consolidation. I have gone through the record and the impugned order. Shaukat Ali was the person to whom initially land of plot no. 17 M (which originally belonged to petitioners) was allotted. And by allowing the revision, his rights would have been affected as such learned Dy. Director of Consolidation has rightly entertained Shaukat Ali's objection while disposing of the revision, filed by the petitioners. As far as, the objection of Shaukat Ali is concerned, the modification sheet attached to the order of Dy. Director of Consolidation, shows that Shaukat Ali has retained only .01274 area of the land of the original plot no. 17 M, to do justice with him as to the total area earlier held by him and to the total area now given to him. As such there appears no illegality in the impugned order in this regard.

8. In view of the above discussions, in exercise of the supervisory-cum-revisional jurisdiction of this Court, under article 226 read with 227 of the Constitution of India, since this Court found no material illegality committed by the Dy. Director of Consolidation in the impugned order, as such no interference is desired in the matter by this Court. This Court in its writ, supervisory or revisional jurisdiction is not supposed to go into the intricate factual disputes.

Therefore, the petition deserves to be dismissed. Accordingly, the petition is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt: December 1, 2004
Sweta